

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ROBERT K. BROWN,

Defendant.

CASE NO. 8:05CR95

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 34). The government has adopted the PSR. (Filing No. 33.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant objects to ¶ 14 (allowing credit for acceptance of responsibility) and ¶¶ 23-38 (prior convictions). Defense counsel represented that the issues with respect to the prior convictions might be resolved prior to sentencing. The Court assumes the objections are to the facts of the convictions and, therefore, if a hearing would be needed the government would bear the burden of proof by a preponderance.

IT IS ORDERED:

1. The Court's tentative findings are:
 - a. The Defendant's Objection to ¶ 14 of the Presentence Investigation Report (Filing No. 34) is denied;

b. The Defendant's Objections to ¶¶ 23-38 of the Presentence Investigation Report (Filing No. 34) will be heard at sentencing, if not previously resolved;

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 6th day of January, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge